IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10841 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRAKASHKUMAR KANTILAL

Versus

HATHISING MANUFACTURING CO.

Appearance:

1. Special Civil Application No. 10841 of 2004

MR KR KOSHTI for Petitioner No. 1

..... for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 13/09/2004

ORAL JUDGEMENT

The petitioner workman has approached this Court being aggrieved of judgement and order in Appeal (IC)

No.9 of 2003 dated 27.05.2004 whereby the learned Member of the Industrial Tribunal, Ahmedabad was pleased to allow the appeal filed by the respondent-appellant Mill Company. The said appeal was filed being aggrieved of judgement and order of the learned Judge of the Labour Court, Ahmedabad in T. Application No.142 of 1990 dated 18.11.2002 whereby the learned Judge of the Labour Court was pleased to order reinstatement of the petitioner workman on his original post with all consequential benefits. The learned Judge was also pleased to order that the petitioner workman be paid 50% of the wages for the period he remained out of job, i.e. from the date of termination till date of reinstatement.

2. Mr.Koshthi, the learned advocate appearing for the petitioner workman submitted that the learned Member of the Industrial Tribunal has committed an error in allowing the appeal and in not appreciating the case of the petitioner workman which was to the effect that, he was serving in Bleaching Department of the Mill Company wherein contract system was not 'permissible'. He submitted that without there being any additional material before the Industrial Tribunal, the learned Member came to a different conclusion than the one which was reached by the learned Judge of the Labour Court, which is not warranted.

3. Mr.Koshthi, the learned advocate for the petitioner workman invited attention of the Court to the judgement and order of the learned Judge of the Labour Court extensively and thereafter to the judgement and order of the Industrial Tribunal to bring home the contention that relying on the same evidence when the learned Judge of the Labour Court had held, the termination of the petitioner workman unlawful and ordered reinstatement, the learned Member of the Industrial Tribunal could not have set aside the order of the learned Labour Judge relying on the same very evidence.

4. On careful scrutiny it is clear that the learned Judge of the Labour Court has not taken pains to consider and appreciate that no evidence is produced by the petitioner workman to establish his case to the effect that he was serving with the Mill Company for the last six years, as a permanent employee with the Mill Company; that after he went on medical leave from 29.12.1989 to 03.01.1990 and reported for duty on 04.01.1990 with fitness certificate he was not allowed to resume duty. It is shocking that without there being a single piece of evidence, which could have been in the nature of

'Presence Card', 'Identity Card', 'ISI Card', etc. the learned Judge of the Labour court has held that the petitioner workman was the permanent employee of the Mill Company. The learned Member of the Industrial Tribunal has rightly observed that not only no evidence is produced, no demand is made by the petitioner workman asking the Mill Company to produce the same. Despite such glaring facts the learned Judge of the Labour Court has held that the petitioner workman was a permanent employee of the Mill Company and his termination is illegal. The only material which is considered and relied on by the learned Labour Judge is that, in reply to the case of the petitioner workman, the deponent examined on behalf of the Mill Company, stated that 'the petitioner workman was working with a contractor', the learned Judge then concluded that the Mill Company is not able to prove its case that the petitioner workman was working with a contractor.

5. In the considered opinion of this Court the approach of the learned Labour Judge does not appear to be erroneous simpliciter but seems to have been motivated by extraneous considerations. Therefore, office is directed to place this matter with a copy of this order before the learned Administrative Judge, In-charge of the Labour Court, Ahmedabad to look into the matter and if deemed fit to inquire into the matter and take appropriate steps so as to see that similar miscarriage of justice is avoided.

6. Having found no substance in the matter the petition is dismissed. But for the fact that the petition is filed by a workman who is out of service since 04.01.1990, no order for cost is made.

(Ravi R. Tripathi, J.)

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